

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 35-72, 75, 83, 92, 99-133, 152-178, and 180-203 are pending in the application, with claims 35, 44, 53, 62, 75, 83, 92, 99, 108, 117, 127, 152, 160, 168, and 169 being the independent claims. Claims 35, 40, 44, 49, 53, 58, 69, 99, 104, 108, 113, 123, 127, 130, 152, 156, 164, 168, 170, 175, 182, 188, 194, and 200 have been amended. The amendments to claims 168 and 170 are requested solely to correct inadvertent typographical errors. Support for the amendments to claims 168 and 170 may be found, for example, in the specification at page 30, line 3. In addition to previously canceled claims, claims 73, 76-82, 84-91, 93-98, and 179 are sought to be canceled without prejudice to or disclaimer of the subject matter therein. Applicants reserve the right to pursue the subject matter of the canceled claims in related applications. These changes are believed to introduce no new matter, and their entry is respectfully requested. Examiner has indicated that claims 62-72, 117-126, 160-178, and 198-203 are allowed.

The Office Action Summary (page 1 of the 08-06-04 office action) lists claims 180 to 197 as being "rejected." However, the remainder of the office action does not detail any statutory basis for the rejection of these claims. These claims depend from claims 75, 83, and 92, which the Examiner has objected to as being allegedly being dependent upon a rejected base claim, noting that the claims would be allowable if in independent form. Applicants respectfully point out that in the Amendment and Reply dated May 24, 2004, claims 75, 83, and 92 were amended to be independent claims, and

claims 180 to 197 were added, which depend from these claims. While Applicants believe that it was the Examiner's intention to indicate claims 75, 83, 92, and 180 to 197 as being "allowed," clarification as to the status of these claims is respectfully requested.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Prior Rejections under 35 U.S.C. §§ 102(e) and 103

Applicants thank the Examiner for considering Applicants' arguments and subsequently withdrawing the rejections under 35 U.S.C. §§ 102(e) and 103. *See* the 08-06-04 office action at page 2.

Indefiniteness Rejection under 35 U.S.C. § 112, Second Paragraph

The Examiner has rejected claim 130 under 35 U.S.C. § 112, second paragraph as being indefinite, noting that language such as "...which further comprises a heterologous polypeptide" would obviate the rejection. Solely to advance prosecution, and not in acquiescence to the Examiner's rejection, Applicants have amended claim 130 to recite that a heterologous polypeptide is fused to the polypeptide of claim 127. The diversion from the Examiner's recommended language is being made so as to provide proper antecedent basis for claim 130, given the amendment requested for claim 127. In addition, Applicants have amended claims 40, 49, 58, 69, 104, 113, 123, 156, 164, 175, 182, 188, 194, and 200 to specify that the claimed polypeptide "further comprises" a heterologous polypeptide. Based on these remarks, Applications respectfully request

that the rejection of claim 130 under 35 U.S.C. § 112, second paragraph be reconsidered and withdrawn.

Enablement Rejections under 35 U.S.C. § 112, First Paragraph

(a) The Examiner has rejected claims 35, 37-44, 46-53, 55-61, 99, 101-108, 110-116, and 152-159 under 35 U.S.C. § 112, first paragraph, for alleged lack of enablement. Applicants respectfully traverse the Examiner's rejection, and maintain that claims 35, 37-44, 46-53, 55-61, 99, 101-108, 110-116, and 152-159 as previously presented are fully enabled. More particularly, Applicants strongly disagree with the Examiner's allegation that "[w]hile the skilled artisan could use an antibody that binds SEQ ID NO:2, it would require undue experimentation to use a polypeptide bound by the antibody if that polypeptide did not share the property of inducing apoptosis or binding TRAIL as disclosed for SEQ ID NO:2." *See* the 06-08-04 office action at page 3, lines 18-21.

Nevertheless, solely to advance prosecution, and not in acquiescence to the Examiner's rejection, Applicants have amended claim 35, 44, 53, 99, and 108 to specify that the claimed polypeptide "induces apoptosis," subject matter which the Examiner has indicated is enabled. *See* 8-06-04 office action at page 3, lines 1-4. Applicants have amended claim 152 to specify that the claimed polypeptide "inhibits apoptosis." Support for this amendment may be found, for example, in the specification at page 32, lines 26 to 32, page 36, line 30 to page 37, line 6, and Example 6, page 53 line 20 to page 54, line 13. Applicants reserve the right to prosecute the subject matter of previously pending claims 35, 37-44, 46-53, 55-61, 99, 101-108, 110-116, and 152-159 in related applications.

Accordingly, Applicants respectfully request that the enablement rejection of claims 35, 37-44, 46-53, 55-61, 99, 101-108, 110-116, and 152-159 under 35 U.S.C. § 112, first paragraph be reconsidered, and further that it be withdrawn.

(b) The Examiner has rejected claims 73, 74, 76-82, 84-91, and 93-98 under 35 U.S.C. § 112, first paragraph for allegedly lacking enablement. Solely to advance prosecution, and not in acquiescence to the Examiner's rejection, Applicants have canceled claims 73, 74, 76-82, 84-91, and 93-98. Applicants reserve the right to pursue these claims in related applications. Accordingly, Applicants respectfully request that the rejection of claims 73, 74, 76-82, 84-91, and 93-98 under 35 U.S.C. § 112, first paragraph be withdrawn.

(c) The Examiner has rejected claims 127-133 under 35 U.S.C. § 112, first paragraph for allegedly lacking enablement. Applicants respectfully traverse the Examiner's rejection, and maintain that claims 127-133 as previously presented are fully enabled. However, solely to advance prosecution, and not in acquiescence to the Examiner's rejection, Applicants have amended claim 127, from which claims 128-133 depend, to recite "[a]n isolated polypeptide consisting of at least 50 contiguous amino acids of amino acids 1 to 133 of SEQ ID NO:2," which the Examiner considers to be enabling. *See* 8-06-04 office action at page 4, lines 28-30. Applicants reserve the right to prosecute the subject matter of previously pending claims 127-133 in related applications.

Based on these remarks and amendments, Applicants respectfully request that the enablement rejection of claims 127-133 under 35 U.S.C. § 112, first paragraph be reconsidered, and further that it be withdrawn.

Written Description Rejections under 35 U.S.C. § 112

(a) The Examiner has rejected claims 35, 37-44, 46-53, 55-61, 99, 101-108, 110-116, and 152-159 under 35 U.S.C. § 112, first paragraph for allegedly failing to comply with the written description requirement. Applicants respectfully traverse the Examiner's rejection, and maintain that previously presented claims 35, 37-44, 46-53, 55-61, 99, 101-108, 110-116, and 152-159 are fully in compliance with the written description requirement. However, solely to advance prosecution, and not in acquiescence to the Examiner's rejection, Applicants have amended claims 35, 44, 53, 99, and 108 to specify that the claimed polypeptide "induces apoptosis," subject matter which the Examiner has indicated is fully described. *See* 8-06-04 office action at page 5, line 29. Applicants have amended claim 152 to specify that the claimed polypeptide "inhibits apoptosis." Support for this amendment may be found, for example, in the specification at page 32, lines 26 to 32, page 36, line 30 to page 37, line 6, and Example 6, page 53 line 20 to page 54, line 13.

Accordingly, Applicants respectfully request that the written description rejection of claims 35, 37-44, 46-53, 55-61, 99, 101-108, 110-116, and 152-159 under 35 U.S.C. § 112, first paragraph be reconsidered, and further that it be withdrawn.

(b) The Examiner has rejected claims 73, 74, 76-82, 84-91, and 93-98 under 35 U.S.C. § 112, first paragraph for allegedly failing to comply with the written description requirement. Solely to advance prosecution, and not in acquiescence to the Examiner's rejection, Applicants have canceled claims 73, 74, 76-82, 84-91, and 93-98. Applicants reserve the right to pursue these claims in related applications. Accordingly, Applicants respectfully request that the written description rejection of

claims 73, 74, 76-82, 84-91, and 93-98 under 35 U.S.C. § 112, first paragraph be withdrawn.

Claim Objections

The Examiner has objected to claims 36, 45, 54, 83, 100, and 109 as allegedly being dependent on a rejected base claim. The 08-06-04 office action at page 9. As noted above, claims 75, 83, 92, 100, and 109 were amended to be independent claims in the Amendment and Reply dated May 24, 2004, and therefore should be deemed "allowable" by the Examiner. It is believed that the amendments made above to claims 35, 44, and 53, from which claims 36, 45, and 54 depend, respectively, should obviate the Examiner's objection to claims 36, 45, and 54. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the objections to claims 36, 45, 54, 83, 100, and 109.

Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

A handwritten signature in black ink, appearing to read "Elizabeth J. Haanes", is written over the printed name.

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